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Docket 82990F-P
Customer No. 01333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Edward Covannon, et al

AN INTELLIGENT TOY WITH
INTERNET CONNECTION
CAPABILITY

Serial No. 09/915,448

Filed July 26, 2001

Commissioner for Patents

P.O. Box 1450

Alexandria, VA. 22313-1450

Group Art Unit: 3713

Examiner: John M. Hotaling

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Paula West
Paula West

5-7-04
Date

Sir:

APPEAL BRIEF TRANSMITTAL

Enclosed herewith in triplicate is Appellants' Appeal Brief for the above-identified application.

The Commissioner is hereby authorized to charge the Appeal Brief filing fee to Eastman Kodak Company Deposit Account 05-0225. A duplicate copy of this letter is enclosed.

Respectfully submitted,

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Enclosures

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Registration No. 27,370



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Sir:

APPEAL BRIEF PURSUANT TO 37 C.F.R. 1.192

Table Of Contents

<u>Table Of Contents</u>	i
<u>Real Party In Interest</u>	1
<u>Related Appeals And Interferences</u>	1
<u>Status Of The Claims</u>	1
<u>Status Of Amendments</u>	1
<u>Summary Of The Invention</u>	1
<u>Issues For Review By The Board</u>	2
<u>Grouping Of Claims</u>	2
<u>Arguments</u>	2
The Rejection	2
<u>Summary</u>	6
<u>Conclusion</u>	6
<u>Appendix I - Claims on Appeal</u>	7

APPELLANT'S BRIEF ON APPEAL

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's Final Rejection of claims 47-72 which was contained in the Office Action mailed January 22, 2004.

A timely Notice of Appeal was filed March 17, 2004.

Real Party In Interest

As indicated above in the caption of the Brief, Eastman Kodak Company is the real party in interest.

Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

Status Of The Claims

Claims 47-72 have been rejected and are appealed.

Appendix I provides a clean, double spaced copy of the claims on appeal.

Status Of Amendments

All amendments have been entered and the claims stand as indicated in Appendix I.

Summary Of The Invention

The present invention is directed to a method, system, and software program for controlling the operation of an interactive device 10 (Figs. 1 and 2) in accordance with a user personal profile. The interactive device is designed to provide self generating interaction with one or more users and has information obtaining means (such as camera module 14, microphone 16, and a communication module 21) that allows the device to obtain information independently with respect to the identity of the users and determining at least one aspect of the local environment at the time of operation of the interactive device. A computer/server 48 controls the operation of the interactive device in response

to a stored personal profile of the one or more users and at least one aspect of the local environment that has been determined.

Issues For Review By The Board

The following issues are presented for review by the Board of Patent Appeals and Interferences:

1. Whether claims 47-72 are unpatentable over 35 USC § 102(e) as being anticipated by Gershman et al. (U.S. Patent 6,401,085).

Grouping Of Claims

Group I Claims 47-50, 52-53, 55-72

Group II Claim 51

Group III Claim 54

Arguments

The Rejection

Group I: Claims 47-50, 52-53, 55-72

- A. The Examiner, in paragraph 1 of the Official Action dated January 22, 2004 rejected claims 47-72 under 35 USC § 102(e) as being anticipated by Gershman et al. U.S. Patent 6,401,085 for the reasons set forth therein.

The claims in Group I include independent claims 47, 65 and 69 upon which the remaining claims in Group I depend at least ultimately. Independent claims 47, 65 and 69 are directed to a system, method and software program for controlling an interactive device. These claims all include the limitation that the interactive device is designed to provide self generated interaction with one or more users. The interactive device has information-obtaining means for independently identifying the identity of one or more users

and for determining at least one aspect of the local environment in which the interactive device is used for controlling the operation of the interactive device in response to a stored personal profile of the one or more users and at least one aspect of the local environment.

In the present invention, there is no need for the user to enter information in order for the device to be interactive. Quite the contrary, the interactive nature of the interactive device, according to the present invention, is a result of the information obtaining means and providing of responses in accordance with a prestored personal profile of the user. Therefore, the present invention is capable of providing self generating interaction based on information that the device itself obtains.

The Examiner, in the Official Rejection, states that the previous rejections are maintained and incorporated herewith. However, Applicants do not clearly understand this incorporation as claims 1-46 were previously presented in the application which are not identical to the claims that were finally rejected. Thus, Applicants comments will be directed only to the rejection as set forth in the final rejection dated January 22, 2004.

The Examiner notes that Gershman is a mobile communication system and has internet capability and a built in or attached bar code reader wherein each member owns and maintains his or her own profile.

The independent claims specifically set forth that the interactive device is designed to provide self generating interaction with one or more users. What this means is that the device itself, on its own initiative personal profiles and programs, will provide certain actions with respect to the current user. For example, if the interactive device is a toy, and the toy knows that it is near a store, the device could say "would you like to go shopping" without any input or question provided by the user. There is no need to provide user input into the device. Thus, the device according to the present invention, provides self generating interaction whereas the device in Gershman is simply a PDA (Personal Digital Assistant) that provides responses to inputs by the user. As set forth in the abstract, the system in Gershman is directed to a system that facilitates web based information retrieval and play. Thus, Gershman is no more than a retrieval system

and is not an interactive device designed to produce self-generating action on its own initiative. The reactive theme is set forth in numerous places in Gershman et al. for example, in the field of the invention Gershman states that the invention is directed to agent-based system and more particularly to a mobile computing environment that accesses the internet to obtain product information for a user and provides tools for collaborative computing. Also as set forth in the summary of the invention, column 3, lines 18-20, the wireless device prompts the user to input information of interest to the user. This information is transmitted to a query to a service routine running on a web service. The service routine then queries the web to find price shipping and availability information from various web suppliers. Thus, it can be clearly seen that the device of Gershman reference is not an interactive self generating device to which the present invention is directed, but instead is directed to a general all purpose device that provides information in response to requests.

The independent claims of the present claims also set forth means for independently obtaining the identity of one or more users. There is nothing in the Gershman et al. reference that teaches or suggests the providing of independently obtaining the identity of the user. Thus, for this second reason, the Gershman reference does not anticipate the claimed invention.

The independent claims also specifically set forth that a computer provides instructions for the interactive device for controlling the operation thereof in response to a stored personal profile of the users and at least one aspect of the local environment. Thus, the device is self initiating recognizing the user and initiates operation of the device without any input of the user.

The device of the present invention is not a retrieval system for gathering information as in Gershman but is directed to controlling a device designed to be interactive with the user. In order for a reference to anticipate claims under 35 USC § 102, it must disclose each and every element of the present invention. The Gershman reference fails to disclose several claimed elements of the present invention. The Gershman reference fails to disclose:

1. providing interactive device;
2. providing self generating interaction with the user;

3. providing independent means for obtaining the identity of the user;
4. providing a computer for controlling the operation of the interactive device in response to the stored personal profile of the user and at least one aspect of the local environment.

Applicants respectfully submit that independent claims 47, 65 and 69 are not anticipated by the cited reference. Likewise the remaining claims of Group I are also not taught for the same reasons.

Group II: Claim 51

Claim 51 is directed to a system of claim 47 wherein a second interactive device interacts with the first interactive device so as to obtain information or instructions that have been obtained from said computer. There is nothing in Gershman that teaches or suggests that two interactive devices are placed together for providing of information to the interactive device. As previously discussed, there is not even a first interactive device that is contemplated by the present invention. Accordingly, it could not teach a second interactive device. In this claim, the second interactive device provides information to the first interactive device. This is not taught or suggested by Gershman.

Applicants respectfully submit that claim 51 is also not anticipated by Gershman et al. and is patentably distinct therein.

Group III Claim 54

Claim 54 is dependent upon independent claim 47 and includes the additional limitation of providing means for obtaining the identity of said one or more users in recognition of a physical or characteristic. There is no teaching or suggestion as previously discussed with the independent claims of recognizing the user. Clearly, the Gershman reference does not teach or suggest recognizing the user based on a physical characteristic of the user. Nowhere is it taught or suggested that the PDA know who the user is based on physical characteristic of the individual. Accordingly, it is respectfully submitted that claim 54 cannot be anticipated by the cited prior art.

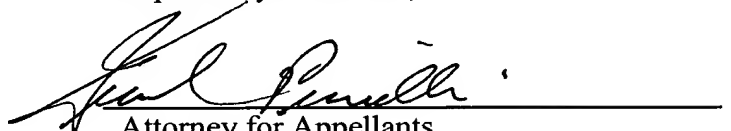
Summary

In summary, Applicants respectfully submit that the present invention is patentable over the cited prior art.

Conclusion

For the above reasons, Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims 47-72.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank Pincelli', is written over a horizontal line.

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Appendix I - Claims on Appeal

47. A system for controlling the operation of an interactive device in accordance with a user's personal profile, comprising:

an interactive device designed to provide self-generating interaction with one or more users, said interactive device having information obtaining means for independently obtaining the identity of said one or more users and for determining at least one aspect of the local environment in which said interactive device is located at the time of operation of said interactive device; and

a computer for providing instructions to said interactive device for controlling the operation of said interactive device in response to a stored personal profile of said one or more users and said at least one aspect the local environment.

48. A system according to claim 47 wherein said means for determining one aspect of the local environment comprises a wireless communication device.

49. A system according to claim 47 wherein said interactive device further comprises a wireless communication device for communicating with said computer.

50. A system according to claim 47 wherein said interactive device further comprises a wireless communication device for use in determining said at least aspect of said local environment.

51. A system according to claim 47 wherein said at least one aspect of said local environment comprises a second device having means for providing information about said second device to said interactive device.

52. A system according to claim 51 wherein said interactive device interacts directly with said second device.

53. A system according to claim 51, wherein said computer obtains additional data from other sources other than said interactive device for use in providing instructions to said interactive device.

54. A system according to claim 51 wherein said interactive devices communicates with a second computer which in turn communicates with said computer for providing instructions which is located remote from said interactive device.

55. A system according to claim 54, wherein said interactive device provides a URL to said second computer for accessing said computer for providing instructions.

56. A system according to claim 51, wherein said computer is part of said interactive device.

57. A system according to claim 51, wherein said interactive device further comprises a GPS system for determining the location of said interactive device.

58. A system according to claim 51, wherein said computer monitors the data received from said interactive device so as to construct and/or adjust a personal profile of said one or more users.

59. A system according to claim 51, wherein a plurality of personal profiles are stored with respect to said one or more users.

60. A system according to claim 51, wherein said computer is provided with a control circuit for controlling certain aspects of the operation of said device.

61. A system according to claim 60, wherein a person other than said one or more users can control the operation of said interactive device.

62. A system according to claim 1, wherein a second interactive device interacts with said first interactive device so as to obtain information and/or instructions that have been obtained from said computer.

63. A system according to claim 62, wherein said second interactive device passes said information and/or instructions to a third interactive device.

64. A system according to claim 47 wherein said means for obtaining the identity of said one or more users is recognition of a physical characteristic.

65. A method for controlling the actions of an interactive device within a local environment with respect to a specific user or users, comprising the steps of:

said interactive device independently obtaining data with respect to said specific user or users and said local environment in which said interactive device is located at the time of operation of said interactive device;

obtaining the personal profile of said user or users;

processing said data with respect to said personal profile and said local environment so as to obtain instructions for providing continuous self-configuring operation of said interactive device; and

said interactive device implementing said instructions.

66. A method according to claim 65, further comprising the step of updating said personal profile of said user or users based on use of said interactive device by said user.

67. A method according to claim 65, wherein said processing of said data is based on a profile that is located at a remote location with respect to the local environment in which said device is located.

68. A method according to claim 67, further comprising the step of obtaining additional data from other devices in the local environment and using said additional data for providing said instructions.

69. A computer software product method for controlling the actions of device within a local environment with respect to a specific user such that when loaded onto a computer will cause said computer to do the following steps of:

said interactive device independently obtaining data with respect to said specific user or users and said local environment in which said interactive device is located at the time of operation of said interactive device;

obtaining the personal profile of said user or users;

processing said data with respect to said personal profile so and said local environment as to obtain instructions for providing continuous self-configuring operation of said interactive device; and

said interactive device implementing said instructions.

70. A computer software product according to claim 69, further comprising the step of updating said personal profile of said user or users based on use of said interactive device by said user.

71. A method according to claim 70, wherein said processing of said data is based on a profile that is located at a remote location with respect to the local environment in which said device is located.

72. A method according to claim 70, further comprising the step of obtaining additional data from other devices in the local environment and using said additional data for providing said instructions.